THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE
ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MARY F. McTIGUE
DIRECTOR

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AO-93-23

Thomas R. Kiley, Esq.
Cosgrove, Eisenberg and Kiley, P.C.
One International Place - Suite 820
Boston, MA 02110

RE: Political Committee's Repayment of Loan from Kevin Fitzgerald

Dear Mr. Kiley:

This letter is in response to your October 26, 1993 request for an advisory opinion regarding Representative Kevin Fitzgerald's political committee repaying a loan which you state Rep. Fitzgerald made to his committee.

The facts as you have related them in your correspondence are as follows. In or about 1982, Representative Fitzgerald loaned his committee $8,000. The loan was reported to this office. The loan was made because the committee wished to purchase a computer, but lacked the necessary funds. The loan was made, and the computer was purchased and has been used by the committee ever since. The loan was not reported as an obligation or debt on filings subsequent to the purchase. Part of the reason for this was that the Representative's personal financial condition did not require him to collect the loan. Now his financial condition has changed and he wishes to collect the loan to make a payment which his committee has concluded would enhance the Representative's political future.

You have asked three questions which I will address separately.

1. May a political committee repay a ten year old loan to the candidate on whose behalf it is organized where the loan was originally reported as such but has not subsequently been reported as a debt?

M.G.L. c. 55, s. 7 provides that "[a]ny candidate may ... make campaign contributions without limitation for the benefit of non-elected political committees organized on his behalf." "Contribution" is defined in Section 1 to include any "gift, subscription [or] loan . . . ." Loans from candidates are contemplated by the campaign finance law and are addressed, in part, in 970 CMR 1.05. Payments made by a committee to repay a lender would come within the definition of "expenditure" included in M.G.L. c. 55, s. 1, since such payments are within the scope of "any purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value. . ."

The campaign finance law, therefore, clearly permits the repayment of a loan. The fact that a committee obligation may not have been reported properly or consistently over a number of years does not invalidate the loan but merely raises a

factual question regarding its existence.

2. May a political committee repay a loan under the circumstances described in Question 1, where the committee has determined that the ultimate use of the money to be repaid will enhance the political future of the candidate?

The campaign finance law does not place any restrictions on the ultimate use of funds paid to a candidate or other person in repayment of a loan. Therefore, if the loan that you describe was made by the candidate to the committee, the loan can be repaid regardless of the ultimate use of the funds.[1]

3. What amendments to prior reports are necessary if the candidate and committee pursue repayment as described in Questions 1 and 2?

In order to answer this question this office reviewed the committee's campaign finance reports. Unfortunately, the reports filed by the committee contain contradictory information regarding the character of the transactions involving the computer. Certain statements suggest that the committee purchased the computer; other statements suggest that the computer was purchased, and paid for, by Representative Fitzgerald, after the committee paid for the computer.

In September, 1984, the committee first reported the computer as a liability, stating that in April, 1984 the computer was purchased from Rep. Fitzgerald. The computer was valued at $8,200.00. The committee reported making payments of $7,588.06 for the computer to Financeamerica Corporation, not Rep. Fitzgerald, between May and December, 1984. The September report was amended in October, 1984, to indicate that the committee owed payments to Financeamerica rather than Rep. Fitzgerald, and in January, 1985, the committee listed the computer as an asset valued at $7,587.48, acquired by a loan from Financeamerica.

On January 10, 1986, the committee reported receiving $8,200.00 from Rep. Fitzgerald, and also reported paying Rep. Fitzgerald $8,200.00 and stated that the purpose of the payment was "purchase of computer." The committee did not report any remaining assets or liabilities.

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1. You have suggested that the proposed use by the candidate would enhance the candidate's political future. As noted, the proposed use is irrelevant if the committee is repaying a loan. The use would be relevant only if the committee wished to make an expenditure independently of any loan. You have stated that "[o]ne anticipated use of the funds is as a payment to Elizabeth Scullin, sister of the late Mary Guzelian, from whom the Representative inherited funds in 1985 that made it unnecessary for him to seek repayment from his committee of this very loan." Although this office does do not have sufficient facts to determine conclusively whether such an expenditure would be permissible, I assume that the expenditure would be part of a settlement in a civil lawsuit. It appears unlikely that such an expenditure to help a candidate resolve a lawsuit could be viewed as anything other than a primarily personal use. See 970 CMR 2.06(6)(a)3.

On January 24, 1986, the committee sent this office a letter which stated:

> Regarding payments to Financeamerica, they were made in payment for the leasing of the computer from the candidate. The $8,200.00 cross entry from the candidate to the Committee was an error transaction regarding the above and was corrected at time of transaction. . . I filed Schedule E in 1984 showing the computer as an asset of the Committee in error, it was in fact owned by the candidate.

The conclusion drawn from the foregoing statements is that either: (1) the committee bought the computer and paid for the computer; or (2) Rep. Fitzgerald bought the computer on credit and owned the computer, which was used by the committee, and paid for by the committee. Under either situation, of course, the candidate can not receive any payment from the committee, since no loan would have been made.

If the committee reviews its records and concludes that a loan was made and is currently outstanding, it should file appropriate amendments (Form CPF 102A, a copy of which is enclosed). Amendments would have to be filed for the initial report to be changed, each January 10th report of non-election years subsequent to the initial amendment; and each pre-preliminary, pre-election, and January 10th report for election years subsequent to the initial amendment.

In addition, given the conflicting reports on the public record I would require the committee to file any documents executed or prepared contemporaneously with the loan in order to demonstrate satisfactorily the existence of the outstanding loan.

In conclusion, a political committee may repay an outstanding loan to a candidate regardless of the planned use of the proceeds of the loan. However, where the record is ambiguous or contradictory the committee should file appropriate amendments to clarify the record and any documents executed or prepared contemporaneously with the loan to establish the loan's existence.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,

Mary F. McTigue
Director

MFM/cp
Enclosure